

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: Nancy A. DULZER et al. Docket No.: MBC-0518
Serial No: 10/811,096 Examiner: Paul D. Marcantonio
Filed: March 26, 2004 Group Art Unit: 1793
Title: LIQUID COLORING SOLUTION AND COLORED CEMENTITIOUS COMPOSITION

COMMISSIONER FOR PATENTS
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Certificate of Electronic Transmission

I hereby certify that this correspondence is being transmitted to the United States Patent and Trademark Office via the Office Electronic Filing System in accordance with 37 C.F.R. §1.6(a)(4).

Salvatore A. Sidoti

(type or print name of person signing paper)

May 29, 2008

(type or print name of person signing paper)

(date)

PETITION REQUESTING WITHDRAWAL OF A HOLDING OF ABANDONMENT UNDER 37 C.F.R. §1.181

Dear Sir:

I. REQUEST TO WITHDRAW HOLDING OF ABANDONMENT.

Applicants respectfully petition the Patent and Trademark Office, under 37 C.F.R. §1.181, to withdraw the Examiner's holding of abandonment of the present application.

A. Promptness of Submission

The Patent and Trademark Office mailed a Notice of Abandonment for this application on May 16, 2008, which was received by Applicants' attorneys on May 19, 2008. The present request to withdraw the holding of abandonment is being submitted within two (2) months of the mailing date of the Notice of Abandonment. Accordingly, Applicants' respectfully submit that the present petition requesting withdrawal of the holding of abandonment is timely filed.

B. Materials Submitted

Applicant respectfully submits herewith the following:

1. Copy of Notice of Abandonment;
2. Copy of Applicants' timely filed Response on April 12, 2008;
3. Copy of the Petition for Extension of Time filed by Applicants on April 12, 2008; and
4. Copy of the dated Electronic Acknowledgement Receipt showing that the Response, Petition for Extension of Time, and payment for the Petition for Extension of Time were received by the USPTO on April 12, 2008.

C. Statement by Applicants Regarding Timeliness of Response

The present application was filed on March 26, 2004. An Office Action was mailed by the Patent and Trademark Office on October 12, 2007. Applicants timely responded to this Office Action on April 12, 2008 along with a petition for three month extension of time and payment of the extension of time fee . The Patent and Trademark Office mailed a Notice of Abandonment mailed on May 16, 2008. The Notice of Abandonment alleges that the present application was abandoned, for failure to reply to the October 12, 2007 Office Action mailed by the Patent and Trademark Office.

The MPEP provides that "Applicants may establish that a reply was filed with a postcard receipt that properly identifies the reply and provides *prima facie* evidence that the reply was timely filed. For example, if the application has been held abandoned for failure to file a reply to a first Office Action, and applicant has a postcard receipt showing that an amendment was timely filed in response to the Office Action, then the holding of abandonment should be withdrawn upon the filing of a petition to withdraw the holding of abandonment." MPEP §711.03(c), MPEP §503.

Applicants submit that the Electronic Acknowledgement Receipt is the electronic equivalent to the return receipt postcard and that it provides equivalent *prima facie* evidence that the response was timely filed on April 12, 2008.

D. Conclusion

Applicants respectfully submit that Applicants' timely filed the required Response under 37 C.F.R. 1.111 on April 12, 2008.

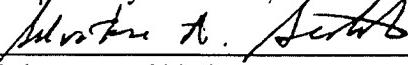
Based on the materials submitted herewith and remarks, Applicants respectfully request that the Patent and Trademark Office withdraw the Examiner's holding of abandonment of the present application. The Patent and Trademark Office should proceed with the examination of the present application based on the Response originally filed on April 12, 2008. Acknowledgement of the pending active status of the present application is respectfully requested.

Authorization to Charge Deposit Account

Applicants' believe that no fee is due for the filing of the present Petition Requesting Withdrawal of a Holding of Abandonment Under 37 C.F.R. §1.181. However, in the event a fee is indeed applicable to the filing of this paper, the Director of the United States Patent and Trademark Office is authorized to charge any fees for Docket No. MBC-0518, which might be required to effect the filing of these document to Deposit Account No. 50-3275. This authorization is being submitted electronically.

Should the Office have any questions, the undersigned attorney would welcome a telephone call.

Respectfully submitted,



Salvatore A. Sidoti, Esq. (Reg. No. 43,921)
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Telephone: 440.808.0011
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Attorney for Applicants
5-29-08

Date



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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/811,096	03/26/2004	Nancy A. Dulzer	MBC-0518	9732
23575	7590	05/16/2008	EXAMINER	
CURATOLO SIDOTI CO., LPA 24500 CENTER RIDGE ROAD, SUITE 280 CLEVELAND, OH 44145			MARCANTONI, PAUL D	
		ART UNIT		PAPER NUMBER
				1793
		MAIL DATE		DELIVERY MODE
		05/16/2008		PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

RECEIVED

MAY 19 2008

CURATOLO SIDOTI

Reviewed by JQC/SAS 5-19-08
FlexTrac JB 5-19-08
Docket LF _____
File to Atty. SAS

Notice of Abandonment	Application No.	Applicant(s)	
	10/811,096	DULZER ET AL.	
	Examiner Paul Marcantoni	Art Unit 1793	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

This application is abandoned in view of:

1. Applicant's failure to timely file a proper reply to the Office letter mailed on 12 October 2007.
 - (a) A reply was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply (including a total extension of time of _____ month(s)) which expired on _____.
 - (b) A proposed reply was received on _____, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection. (A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
 - (c) A reply was received on _____ but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
 - (d) No reply has been received.
2. Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
 - (a) The issue fee and publication fee, if applicable, was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
 - (b) The submitted fee of \$_____ is insufficient. A balance of \$_____ is due.
The issue fee required by 37 CFR 1.18 is \$_____. The publication fee, if required by 37 CFR 1.18(d), is \$_____.
 - (c) The issue fee and publication fee, if applicable, has not been received.
3. Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
 - (a) Proposed corrected drawings were received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply.
 - (b) No corrected drawings have been received.
4. The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
5. The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
6. The decision by the Board of Patent Appeals and Interference rendered on _____ and because the period for seeking court review of the decision has expired and there are no allowed claims.
7. The reason(s) below:

/Paul Marcantoni/
Primary Examiner, Art Unit 1793

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PETITION FOR EXTENSION OF TIME UNDER 37 CFR 1.136(a) FY 2008 <i>(Fees pursuant to the Consolidated Appropriations Act, 2005 (H.R. 4818).)</i>		Docket Number (Optional) MBC-0518																								
Application Number 10/811,096		Filed March 26, 2004																								
For Liquid Coloring Suspension																										
Art Unit 1793	Examiner P.D. MARCANTONI																									
This is a request under the provisions of 37 CFR 1.136(a) to extend the period for filing a reply in the above identified application.																										
The requested extension and fee are as follows (check time period desired and enter the appropriate fee below):																										
<table> <thead> <tr> <th></th> <th style="text-align: center;"><u>Fee</u></th> <th style="text-align: center;"><u>Small Entity Fee</u></th> <th></th> </tr> </thead> <tbody> <tr> <td><input type="checkbox"/> One month (37 CFR 1.17(a)(1))</td> <td style="text-align: center;">\$ 120</td> <td style="text-align: center;">\$ 60</td> <td>\$ _____</td> </tr> <tr> <td><input type="checkbox"/> Two months (37 CFR 1.17(a)(2))</td> <td style="text-align: center;">\$ 460</td> <td style="text-align: center;">\$ 230</td> <td>\$ _____</td> </tr> <tr> <td><input checked="" type="checkbox"/> Three months (37 CFR 1.17(a)(3))</td> <td style="text-align: center;">\$ 1,050</td> <td style="text-align: center;">\$ 525</td> <td style="text-align: center;"><u>\$ 1050</u></td> </tr> <tr> <td><input type="checkbox"/> Four months (37 CFR 1.17(a)(4))</td> <td style="text-align: center;">\$ 1,640</td> <td style="text-align: center;">\$ 820</td> <td>\$ _____</td> </tr> <tr> <td><input type="checkbox"/> Five months (37 CFR 1.17(a)(5))</td> <td style="text-align: center;">\$ 2,230</td> <td style="text-align: center;">\$ 1,115</td> <td>\$ _____</td> </tr> </tbody> </table>				<u>Fee</u>	<u>Small Entity Fee</u>		<input type="checkbox"/> One month (37 CFR 1.17(a)(1))	\$ 120	\$ 60	\$ _____	<input type="checkbox"/> Two months (37 CFR 1.17(a)(2))	\$ 460	\$ 230	\$ _____	<input checked="" type="checkbox"/> Three months (37 CFR 1.17(a)(3))	\$ 1,050	\$ 525	<u>\$ 1050</u>	<input type="checkbox"/> Four months (37 CFR 1.17(a)(4))	\$ 1,640	\$ 820	\$ _____	<input type="checkbox"/> Five months (37 CFR 1.17(a)(5))	\$ 2,230	\$ 1,115	\$ _____
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<input type="checkbox"/> Applicant claims small entity status. See 37 CFR 1.27. <input type="checkbox"/> A check in the amount of the fee is enclosed. <input checked="" type="checkbox"/> Payment by credit card. <input type="checkbox"/> The Director has already been authorized to charge fees in this application to a Deposit Account. <input checked="" type="checkbox"/> The Director is hereby authorized to charge any fees which may be required, or credit any overpayment, to Deposit Account Number <u>50-3275</u> . I have enclosed a duplicate copy of this sheet.																										
WARNING: Information on this form may become public. Credit card Information should not be included on this form. Provide credit card information and authorization on PTO-2038.																										
I am the <input type="checkbox"/> applicant/inventor. <input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96). <input checked="" type="checkbox"/> attorney or agent of record. Registration Number <u>43,921</u> <input type="checkbox"/> attorney or agent under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____.																										
/Salvatore A Sidoti, Reg No. 43,921/		April 12, 2008																								
Signature		Date																								
Salvatore A. Sidoti		440,808,0011																								
Typed or printed name		Telephone Number																								
NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.																										
<input checked="" type="checkbox"/> Total of <u>1</u> forms are submitted.																										

This collection of information is required by 37 CFR 1.136(a). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 6 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

Application Serial No.: 10/811,096
Applicants: Nancy A. DULZER et al
Office Action Mailing Date: October 12, 2007
Response to Office Action Filed: April 12, 2008

Docket No. MBLP0518

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: Nancy A. DULZER et al. Docket No.: MBC.P0518
Serial No: 10/811,096 Group Art Unit: 1771
Filed: March 26, 2004 Examiner: Paul D. Marcantoni

Title: Liquid Coloring Solution and Colored Cementitious Composition
MAIL STOP AMENDMENT
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ALEXANDRIA, VA 22313-1450

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Salvatore A. Sidoti

(type or print name of person signing paper)

/Salvatore A. Sidoti/

(signature of person mailing paper)

4-12-2008

(date)

RESPONSE TO OFFICE ACTION

To the Honorable Commissioner For Patents:

I. INTRODUCTORY COMMENTS

Applicants, through their undersigned Attorney, hereby respectfully respond to the Office Action mailed October 12, 2007.

Submitted is a petition for a three month extension of time and the appropriate petition fee.

Remarks begin on Page 2.

Application Serial No.: 10/811,096
Applicants: Nancy A. DULZER et al
Office Action Mailing Date: October 12, 2007
Response to Office Action Filed: April 12, 2008

Docket No. MBI.P0518

II. REMARKS

United States Serial No. 10/811,096 was filed on March 26, 2004.

Claims 1-90 were originally filed in the present application.

A Restriction Requirement was mailed by the Office on February 6, 2007. On March 30, 2007, Applicants responded to the Restriction Requirement by electing to prosecute the claims of the Group III in the present application and traversing the Restriction Requirement between Groups I and III.

An Election of Species Requirement was subsequently mailed by the Office on June 18, 2007. Applicants responded to the Election of Species requirement on August 20, 2007.

The present Office Action makes the Restriction Requirement final. Claims 47-57 and 90 are currently under consideration. In view of the remarks set forth herein, Applicants respectfully request reconsideration and allowance of claims 47-57 and 90.

Claims 47-57 and 90 are rejected under 35 U.S.C. §102 or, in the alternative, under 35 U.S.C. §103(a), in view of Farrington et al, Moreau et al, Vickers Jr et al, Bury et al, O'Brien et al, Marshall et al, or Bown et al for the reasons set forth in the Office Action.

The Present Claims

It is known to use pigments to impart color to a cementitious composition. However, the use of pigments generally decreases the slump and water demand of the cementitious composition to which they are added. The inclusion of an additional amount to meet the increased water demand results in the dilution of

the desired color and decreases the overall strength of the resulting cementitious structure.

The Applicants herein have invented a pigment dispersion that is stable over a long period of time and, because of the synergistic combination of polycarboxylate dispersant and thixotropic additive, maintains the pigment homogenously dispersed throughout the admixture while not increasing the water demand or diluting the resulting color of the cementitious composition. Thus, the application is directed to a liquid coloring suspension for coloring cementitious compositions, the suspension including a synergistic combination of a liquid, polycarboxylate dispersant, thixotropic additive and pigment. Given the combination of components of the liquid coloring suspension, it is unexpected and surprising that the liquid coloring suspension possesses a viscosity that decreases then stabilizes over time. None of the references cited alone or in combination disclose, suggest, or teach an admixture composition having the claimed components or the exhibited viscosity properties.

Farrington '174

Farrington '174 is directed to a cold weather admixture that accelerates the setting time and strength development of cementitious compositions. The cold weather admixture comprises an inorganic salt having freezing point depressing properties, an inorganic early strength set and strength accelerator, an organic set accelerator, and a polycarboxylate dispersant for cementitious compositions.

While the admixture disclosed in Farrington '174 may include a polycarboxylate dispersant and a pigment, it certainly does not disclose or suggest the inclusion of a thixotropic additive. The Office Action specifically alleges that the "pumping aids" disclosed by Farrington et al anticipate a thixotropic additive. Applicants respectfully disagree. A thixotropic additive imparts thixotropy to a particular material. The term thixotropy refers to the ability of a particular material (including dispersions and suspensions) having a first viscosity to become less viscous (i.e.-become thinner) upon an application of energy to the material, and then

to return to the first viscosity (i.e.-become thicker) when the applied energy is removed from the material. For example, a thixotropic colloidal gel having a first viscosity will liquefy when it is agitated, but will then return to gel form when at rest. Because Farrington '174 does not disclose a pigment dispersion containing a thixotropic additive, it does not anticipate the pending claims. Furthermore, there is simply no teaching, disclosure, or suggestion in Farrington '174 that the disclosed pumping aids for cementitious compositions imparts thixotropic properties to the pigment dispersion. For these reasons, Farrington '174 does not anticipate or render obvious the claimed liquid coloring suspension. Applicants respectfully request that these rejections be withdrawn.

Moreau '770 and '106

Moreau '770 and '106 have been cited against claims 47-57 and 90. Moreau et al '106 is a continuation of Moreau et al '770 and therefore both references share the same disclosure. Therefore, Applicants traversing remarks apply equally to both references.

Both Moreau '770 and '106 disclose a compatibilizing admixture for a high pozzolan cement composition, wherein the admixture includes a derivatized polycarboxylate dispersant and a set accelerator. Moreau '770 and '106 merely disclose that a water and/or pigment may be added directly to the cementitious composition. Neither Moreau '770 nor '106 disclose or suggest that the compatibilizing admixture itself may contain either a pigment or thixotropic additive. Therefore, Moreau et al do not disclose a stable pigment dispersion comprising a liquid, polycarboxylate dispersant, thixotropic additive and pigment, wherein the viscosity of the liquid coloring suspension decreases and stabilizes over time. Accordingly, neither Moreau '106 nor '770 anticipate the pending claims. Because both Moreau '106 and '770 simply disclose that pigments and polycarboxylate dispersants may be separately added to pozzolanic cementitious compositions, these references to not provide any suggestion or motivation for a stable pigment dispersion comprising a liquid, polycarboxylate dispersant,

thixotropic additive and pigment, wherein the viscosity of the liquid coloring suspension decreases and stabilizes over time. Accordingly, neither Moreau '106 nor '770 render the pending claims obvious.

Additionally, metakaolin is a known alumino-silicate pozzolan material that is obtained by calcining kaolin clay. Nowhere in Moreau '106 or '770 is it disclosed that metakaolin acts as a thixotropic additive. In any event, Moreau '106 and '770 merely disclose that metakaolin or silica fume may be added directly to the cementitious composition as a pozzolanic replacement for hydraulic cement binder. Nowhere do Moreau '770 or '106 disclose that there is a stable pigment dispersion including water, polycarboxylate dispersant, pigment and metakaolin. Applicants therefore respectfully request that these rejections be withdrawn.

Vickers '143

Claims 47-57 and 90 are not anticipated by Vickers '143. Vickers '143 is directed to a pozzolanic cement composition. Vickers '143 does not disclose an admixture for cementitious compositions that includes a thixotropic additive or a pigment. Applicants have discussed the nature of a thixotropic additive in connection with the Moreau references above and that discussion is incorporated by reference into Applicants' remarks over the Vickers '143 reference. Vickers '143 does not disclose the inclusion of a thixotropic additive in a stable pigment dispersion admixture. Applicants do not deny that pigments may be added to cement compositions to impart color. However, Vickers '143 does not disclose a stable pigment dispersion admixture that includes a liquid, polycarboxylate dispersant, pigment and water, where the viscosity of the liquid coloring suspension decreases and then stabilizes over time. Thus, Vickers '143 does not anticipate the pending claims.

Vickers '143 does disclose that water and pigment may be separately added directly to a cementitious composition, but this does not provide any suggestion or motivation to include a thixotropic agent or a pigment in

combination with a polycarboxylate dispersant and a liquid to provide a stable pigment dispersion for cementitious compositions. It does not matter that the resulting cementitious composition disclosed in Vickers '143 may include a separately added pigment or other known additives. Applicants therefore respectfully request that the rejections over the Vickers '143 reference be withdrawn.

Bury '814

Bury '814 is directed to a dry cast cementitious composition. Bury '814 merely discloses that pigment may be added directly to the dry cast cementitious composition. Bury '814 does not disclose or suggest an admixture containing either a pigment or thixotropic additive. Therefore, Bury '814 does not disclose a stable pigment dispersion comprising a liquid, polycarboxylate dispersant, thixotropic additive and pigment, wherein the viscosity of the liquid coloring suspension decreases and then stabilizes over time. Accordingly, Bury '814 does not anticipate the pending claims.

Because Bury '814 simply discloses that pigments and polycarboxylate dispersants may be separately added to dry cast cementitious compositions, this does not provide any suggestion or motivation for a stable pigment dispersion comprising a liquid, polycarboxylate dispersant, thixotropic additive and pigment, wherein the viscosity of the liquid coloring suspension decreases and then stabilizes over time.

The dry cast cementitious composition is not "pumped" or "transported". Therefore, the consideration of keeping components of a liquid admixture as a homogenous dispersion or suspension for uniform introduction into a cement composition is not a consideration of dry cast cementitious composition. Therefore, it would not have been obvious to one of ordinary skill in the art to add a thixotropic additive to an admixture for a dry cast cementitious composition or to a dry cast cementitious composition, or to an admixture containing liquid,

polycarboxylate dispersant and pigment. Applicants therefore request that the rejections over the Bury '814 reference be withdrawn.

Bury '183

Bury '183 is directed to an admixture comprising a polycarboxylate dispersant, set retarder and strength improvement additive. Bury '183 does not disclose the inclusion of a thixotropic additive. Therefore, Bury '183 does not disclose a stable pigment dispersion comprising a liquid, polycarboxylate dispersant, thixotropic additive and pigment, wherein the viscosity of the liquid coloring suspension decreases and stabilizes over time. Simply because Bury '183 discloses that a pigment may be added to a cement admixture, it does not teach that that admixture provides a homogenous and stable dispersion of pigment within the admixture due to a synergistic combination of pigment, thixotrope, and dispersant. Accordingly, Bury '183 does not anticipate the pending claims.

Bury '183 is concerned with providing an admixture for cementitious compositions that increases the compressive strength of the resulting cementitious composition without negatively effectively the setting time of the composition. The disclosure of adding pigment is merely incidental to the Bury '183 invention. To the contrary, the present claims are directed to a homogeneous pigment dispersion having a stable viscosity over time to enable uniform transport of the dispersion and uniform coloring of a resulting cementitious composition. This is achieved by the synergistic combination of polycarboxylate dispersant, thixotropic additive and pigment. None of the issues regarding uniformity and/or viscosity stability are of concern or even mentioned in Bury '183. Thus, there is no disclosure in Bury '183 addressing the issue of providing and maintaining a homogeneous and stable pigment dispersion for coloring cementitious compositions. Consequently, Bury '183 does not provide any suggestion or motivation for a stable pigment dispersion comprising a liquid, polycarboxylate dispersant, thixotropic additive and pigment, wherein the viscosity of the liquid

coloring suspension decreases and stabilizes over time. Accordingly, Bury '183 does not render the pending claims obvious.

O'Brien

O'Brien '435 and '939 disclose a chemical composition including a liquid, bisulfite terminated oligomeric dispersant, a pigment and extenders. Neither O'Brien '435 nor '939 discloses the inclusion of a thixotropic additive. The disclosure of extenders or thickeners is not a disclosure of a thixotropic additive that imparts the property of thixotropy to the admixture. Additionally, the viscosities measured in O'Brien '435 and '939 are well below what the present inventors' experience indicates would provide a stable pigment dispersion, free of pigment stratification. Therefore, O'Brien do not disclose a stable pigment dispersion comprising a liquid, polycarboxylate dispersant, thixotropic additive and pigment, wherein the viscosity of the liquid coloring suspension decreases and stabilizes over time. Accordingly, neither O'Brien '435 nor '939 anticipate the pending claims.

O'Brien '435 and '939 are directed to coating compositions for paper. By contrast, the present claims are directed to a pigment dispersion for cementitious compositions. Because O'Brien '435 and '939 represent non-analogous art in a completely different fields of inventive endeavor, the O'Brien references do not address, and are not concerned with, providing a stable pigment dispersion for coloring cementitious compositions that does not increase water demand or effect any other property of the cementitious composition. Therefore, O'Brien does not provide any suggestion or motivation for a stable pigment dispersion comprising a liquid, polycarboxylate dispersant, thixotropic additive and pigment, wherein the viscosity of the liquid coloring suspension decreases and stabilizes over time. Accordingly, neither O'Brien '939 nor '435 render the pending claims obvious. Applicants therefore request that the rejections over the O'Brien references be withdrawn.

Marshall '292

Marshall et al '292 is directed to a liquid dishwashing detergent for automatic dishwashing applications. The liquid dishwashing detergent is intended to be a replacement for granular products. Among other components, the liquid dishwashing detergent includes enzymes, an enzyme stabilizing system, and a detergent surfactant. Marshall '292 expressly discloses that the cleaning benefit is achieved via the enzymes and detergent surfactant. See Column 1 at Lines 47-49. Thus, the enzymes and surfactant are critical to the invention. Marshall '292 discloses to include a viscoelastic thixotropic thickener to the dishwashing detergent, presumably for the purpose of thickening the composition to provide a gel, concentrated gel, or paste detergent composition. See Column 15 at Lines 3-9. Nowhere in Marshall '292 is it disclosed that the dishwashing detergent has a viscosity that, due to a synergistic combination of dispersant and thixotrope, the viscosity decreases and then stabilizes over time. Furthermore, Applicants also note that none of the 21 inventive examples of the dishwashing detergent reported in Marshall '292 include a pigment. To the contrary, each example includes a dye, most likely an easily incorporated water soluble dye. Thus, Marshall et al '292 does not disclose a thixotropic pigment dispersion. Applicants therefore respectfully request that the rejections be withdrawn.

Bown '308

Bown '308 discloses a process for preparing an aqueous suspension of ground particulate material. The process includes preparing an aqueous suspension of coarse particulate material, grinding the suspension in the presence of a polycarboxylate dispersant and adding further polycarboxylate dispersant after the grinding step. The Examiner expressly concedes that Bown '308 does not disclose the addition of a thixotropic additive. Therefore, the present claims are not anticipated and the 102 rejection should be withdrawn.

With respect to the 103 rejection, the viscosities reported in Bown '308 are only measured to 24 hours, which does not represent the long term stability of the suspension. Additionally, the viscosities reported in Bown '308 are well below what the Applicants herein know to produce a stable pigment dispersion over time without stratification of the pigment. Finally, there is no mention or suggestion anywhere in Bown '308 of the inclusion of a material, such as a thixotropic additive, to influence the rheological properties of the particulate suspension. To the contrary, Bown '308 is merely concerned with a controlled grinding process in the presence of dispersant while maintaining a specific pH of the suspension. Applicants therefore request that the 103 rejection be withdrawn.

Gleeson et al

Gleeson et al is directed to a fiber-reinforced cement product that contains cement, reinforcing fibers and two low density components, namely, volcanic ash and hollow ceramic microspheres. Gleeson et al teach that thickeners and pigments may be added to the fiber-reinforced cement. However, Gleeson teaches to add the pigments and thickeners directly to the cement. There is no suggestion or motivation to provide a pigment dispersion including a dispersant, pigment and thixotropic additive. Furthermore, the disclosure of a thickening additive cannot be automatically equated with a thixotropic additive. A thickening additive simply increases the viscosity of a material to which it is added. On the other hand, a thixotropic additive imparts the property of thixotropy to a material to which it is added. Moreover, the present claims are directed to a pigment dispersion wherein the viscosity actually decreases over time, even with the inclusion of a thixotropic additive. None of the primary references disclose the combination of liquid, pigment, dispersant and thixotropic additive to form a stable pigment dispersion. The additional teachings of Gleeson et al do not cure this defect, as nowhere in Gleeson is it disclosed to prepare a liquid admixture or suspension containing a thixotrope or pigment. Applicants therefore request that the 103 rejections over each primary reference in combination with Gleeson et al be withdrawn.

McCurrich et al

McCurrich et al is directed to a pumpable cementitious composition containing cement, dispersing agent and a gelling agent. McCurrich et al teach addition of a gelling agent directly to the cementitious composition. However, there is no suggestion or motivation to provide a pigment dispersion that is to be added to a cement composition, the dispersion including a dispersant, pigment and thixotropic additive. Furthermore, the disclosure of a gelling agent cannot be automatically equated with a thixotropic additive. Again, a gelling agent simply implies that it increases the viscosity of a material to which it is added. On the other hand, a thixotropic additive imparts the property of thixotropy to a material to which it is added. Moreover, the present claims are directed to a pigment dispersion wherein the viscosity actually decreases over time, even with the inclusion of a thixotropic additive. None of the primary references disclose the combination of liquid, pigment, dispersant and thixotropic additive to form a stable pigment dispersion. McCurrich et al are concerned with pumping the cementitious composition, whereas the present application is concerned with pumping a pigment dispersion to be added to a cementitious composition. The additional teachings of McCurrich et al do not cure the defects of the primary references, as nowhere in McCurrich is it disclosed to prepare a stable pigment admixture or suspension containing a thixotrope and a pigment. Applicants therefore request that the 103 rejections over each primary reference in combination with McCurrich et al be withdrawn.

Carpenter et al.

Carpenter et al is directed to a cement slurry composition for well bore applications. Carpenter et al are concerned with the thixotropic nature of the cement slurry composition itself, not an admixture that it to be added to the cement slurry composition. On the other hand, the present claims are concerned with a thixotropic pigment dispersion which may be added to a cementitious composition. There is no suggestion or motivation to provide a thixotropic

pigment dispersion including a dispersant, pigment and thixotropic additive. Moreover, the present claims are directed to a pigment dispersion wherein the viscosity actually decreases over time, even with the inclusion of a thixotropic additive. None of the primary references disclose the combination of liquid, pigment, dispersant and thixotropic additive to form a stable pigment dispersion. The additional teachings of Carpenter et al do not cure the defects of the primary references, as nowhere in Carpenter et al is it disclosed to prepare a liquid admixture or suspension. Applicants therefore request that the 103 rejections over each primary reference in combination with Carpenter et al be withdrawn.

Harris

Harris is directed to a cement composition for pavement patching applications. The Harris composition comprises Portland cement, alpha gypsum, pozzolan and a polymer modifier. It is disclosed that this combination of materials produces a resulting composition having good long term durability, as compared to prior art combinations of Portland cement and alpha gypsum. The polymer modifier, such as an acrylic latex, enhances the bonding characteristics of the composition. Harris discloses the inclusion of water reducers, set accelerators and set retarders in the cementitious composition, and Applicants do not deny that these types of materials are commonly added to cementitious compositions. However, Harris simply discloses that these types of materials are directly added to the cementitious composition. Nowhere does Harris disclose or suggest a liquid admixture composition comprising a thixotropic pigment dispersion.

As discussed above, none of the primary references disclose the combination of liquid, pigment, dispersant and thixotropic additive to form a stable pigment dispersion. Example No. 1 of Harris discloses a mortar prepared from the combination of Portland cement, alpha gypsum, silica fume (pozzolan), fine aggregate, water reducers and set controlling agents. Harris does not disclose that the Example includes a polycarboxylate dispersant, a pigment or a thixotropic agent. Moreover, it appears that each component was separately added directly to

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the hydraulic binder to prepare the mortar composition and that a liquid admixture comprising a combination of components was not used. Furthermore, Harris is not at all concerned with providing a thixotropic pigment dispersion that exhibits stability and uniformity over time. The additional teachings of Harris do not cure the defects of any of the primary references. Applicants therefore request that the 103 rejections over each primary reference in combination with Harris be withdrawn.

In view of the above amendments and remarks, Applicants respectfully request that the 102 and 103 rejections be withdrawn and that the Examiner issue a formal notice of allowability directed to claims 47-57 and 90. Should the Examiner have any questions regarding this Response, the undersigned attorney would welcome a telephone call.

Respectfully submitted,

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April 12, 2008
Date

Electronic Acknowledgement Receipt

EFS ID:	3144092
Application Number:	10811096
International Application Number:	
Confirmation Number:	9732
Title of Invention:	Liquid coloring suspension and colored cementitious composition
First Named Inventor/Applicant Name:	Nancy A. Dulzer
Customer Number:	23575
Filer:	Salvatore Anthony Sidoti
Filer Authorized By:	
Attorney Docket Number:	MBC-0518
Receipt Date:	12-APR-2008
Filing Date:	26-MAR-2004
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Payment Type	Credit Card
Payment was successfully received in RAM	\$ 1050
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Authorized User	SIDOTI, SALVATORE A

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Charge any Additional Fees required under 37 C.F.R. Section 1.17 (Patent application and reexamination processing fees)

File Listing:

Document Number	Document Description	File Name	File Size(Bytes) /Message Digest	Multi Part /.zip	Pages (if appl.)
1	Extension of Time	0518Extension.pdf	81675 f96878b34cf08cd9540a8fa408f15cd38 91d5b2	no	1

Warnings:**Information:**

2	Amendment - After Non-Final Rejection	0518rOA.pdf	126222 e5d5b5c7ff4291bcb3ba38900dded5b34 ccb729d	no	13
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Warnings:**Information:**

3	Fee Worksheet (PTO-06)	fee-info.pdf	8145 6d46981bc7c26960c937b5985ee52b3 39fd5d33	no	2
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